



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 6, 1998

Ms. Barbara G. Heptig  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR98-1860

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117180.

The city of Arlington (the "city") received a request for a mug photo of an individual who currently has a criminal case pending against him for theft. You ask whether the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The availability of "mug shots" was addressed in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) as well as in Open Records Decision No. 616 (1993). In *Houston Chronicle*, the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense reports, police blotters, "show-up" sheets, arrest sheets, and "Personal History and Arrest Records." The court held that some of this information was available to the public under the Open Records Act, including the police blotters, "show-up" sheets, and arrest sheets.<sup>1</sup> However, the court also held that "Personal History and Arrest Records" were excepted from required public disclosure.

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<sup>1</sup>Specific information held to be available in *Houston Chronicle* includes, *inter alia*, social security number, names, aliases, race, sex, age, occupations, addresses, police department identification numbers, and physical conditions. See Open Records Decision No. 127 (1976) at 3; see also Open Records Decision Nos. 508 (1988), 394 (1983), 366 (1983).

The "Personal History and Arrest Records" at issue in *Houston Chronicle* included "mug shots" of arrested persons and other information about arrestees, including identifying numbers, name, race, sex, aliases, place and date of birth, physical description, occupation, marital status, relatives, palm prints, and finger prints. See also Open Records Decision No. 127 (1976) at 4-5. These records primarily contained criminal histories, i.e., information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle*, 531 S.W.2d at 179. Such a criminal history record is generally referred to as a "rap sheet." Noting the existence of "inaccurate or misleading entries" in these records, and that many individuals arrested for crimes are wholly innocent, the court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188. We also note that the privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. See 28 C.F.R. § 20; see also *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act by privacy interest).<sup>2</sup> Recognition of this privacy interest has been echoed in open records decisions issued by this office. See, e.g., Open Records Decision Nos. 565 (1990), 354 (1982), 252 (1980), 216, 183 (1978), 144, 127 (1977).

While this office has recognized that criminal history record information implicates privacy interests, we are not aware of any statutes or judicial opinions that accord privacy protection to "mug shots." The common-law privacy doctrine, however, is incorporated by section 552.101 into the Open Records Act. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated by the Texas Supreme Court in *Industrial Foundation*. Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and it is of no

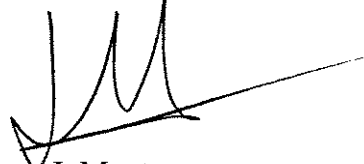
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<sup>2</sup>Significantly, the federal government does not include "mug shots" in its definition of criminal history record information and specifically excludes "identification information such as fingerprint records." 28 C.F.R. § 20.3(b). However, court decisions such as that in *Detroit Free Press, Inc., v. Department of Justice*, 73 F.3d 94 (6<sup>th</sup> Cir.1996) state that "Release of mug shots of federal grand jury indictees did not constitute invasion of indictees' privacy rights, under Freedom of Information Act (FOIA) disclosure exemption for investigatory records compiled for law enforcement purposes; request for disclosure was made during ongoing criminal proceeding, in which names of indictees had already been divulged and in which indictees already had appeared in open court."

legitimate concern to the public.<sup>3</sup> Accordingly, we conclude that the mug shot may not be withheld on common-law grounds under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/nc

Ref.: ID# 117180

Enclosures: Submitted documents

cc: Mr. Larry Wells  
3617 Meadow Lake Drive  
Alvarado, Texas 76009  
(w/o enclosures)

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<sup>3</sup>Section 3(a)(1) also excepts from public disclosure information protected by constitutional privacy. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 (1987) at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). We do not believe that the requested "mug shot" falls within any of the "zones of privacy" or involves the most intimate aspects of human affairs.